

EXHIBIT 53

CONFIDENTIAL

In accordance with a protective order, the enclosure(s) shall be treated as confidential and shall not be shown to any person other than those persons designated in paragraph 8.2 of the paragraph order.

CONFIDENTIAL

Page 1

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF WYOMING

CUSTODIA BANK, INC.,

Plaintiff,

vs.

No.

FEDERAL RESERVE BOARD OF

22-cv-00125-SWS

GOVERNORS and FEDERAL RESERVE

BANK OF KANSAS CITY,

Defendants.

CONFIDENTIAL

CONFIDENTIAL DEPOSITION OF JUDITH HAZEN, a
Witness, taken on behalf of the Plaintiff before
Kelsey Robbins Schmalz, CSR No. 1571, CCR No. 1148,
RPR, pursuant to Notice on the 16th of October, 2023,
at the Federal Reserve Bank of Kansas City, 1
Memorial Drive, Kansas City, Missouri.

CONFIDENTIAL

Page 74

1 legislation and these kind of charters out of
2 Wyoming?

3 A. I don't think that there were specific
4 committees created to address the legislation in
5 Wyoming. That was something that just by virtue of
6 our boundaries existed within the Federal Reserve
7 Bank of Kansas City. That said, some of the
8 questions that were raised by this unique charter
9 type were similar to questions that were being raised
10 in other areas of the country.

11 Q. So let me ask you about some acronyms
12 we've seen in the documents.

13 A. Sure.

14 Q. And I'm going to ask you about who
15 created this group and who sits on it. We see an
16 acronym of NTAA. Are you familiar with what that
17 means?

18 A. Yes.

19 Q. I'm assuming that's nontraditional
20 account activity or applicant.

21 A. I think of it as nontraditional
22 account access.

23 Q. And is that an actual group of
24 individuals that are part of an NTAA committee?

25 A. Yes.

CONFIDENTIAL

Page 75

1 Q. Who formed that committee, the NTAA?

2 A. So going back a few years as you're
3 watching evolution in banking and you are seeing the
4 creation of new charters or new uses of existing
5 charters, conversations start amongst the presidents
6 of the Reserve Banks about the need to be open and
7 communicating what is coming to the door and the
8 requests for the accounts and services to make sure
9 that we are fully considering all the risks that are
10 presented by these different activities, and so with
11 that you need a structure or a framework in order to
12 bring those conversations together, and so through
13 that, the nontraditional account access group was
14 created to give thought to how those conversations
15 can be facilitated and how there can be better
16 awareness by the public of what risks are being
17 analyzed when an account request comes in.

18 Q. Is this nontraditional account access
19 group something created by the Federal Reserve Board
20 of Governors?

21 A. The Board of Governors was engaged as
22 well.

23 Q. So who sits on the NTAA?

24 A. So there is a steering committee that
25 consists of representatives from several reserve

CONFIDENTIAL

Page 76

1 banks as well as individuals from the Board of
2 Governors.

3 Q. So is there like a listserv of NTAA
4 people that you guys are communicating where we could
5 know exactly who is on that?

6 A. We could go and pull the membership
7 list. There's not a listserv, but.

8 Q. Do you keep minutes of meetings?

9 A. The -- I don't recall if the steering
10 committee keeps minutes. I would have to verify
11 that.

12 Q. Who is on the steering committee?

13 A. Representatives from several Reserve
14 Banks and representatives from the Board of
15 Governors.

16 Q. Are you on the steering committee?

17 A. I am.

18 Q. And were you throughout the time that
19 Custodia was trying to get their master account?

20 A. I was not.

21 Q. When did you get put on the committee?

22 A. I would have to verify the specific
23 year, but it was in the course of when the request
24 was pending.

25 Q. You were put on that committee due to

CONFIDENTIAL

Page 77

1 Custodia pushing for their master account
2 application, correct?

3 A. I was put on the committee to take the
4 place of a former member who retired from the Federal
5 Reserve Bank of Kansas City.

6 Q. And who is that?

7 A. Susan Zubradt.

8 Q. Give me a sense. How many people are
9 we talking about on the steering committee? Is there
10 a representative from each Federal Reserve Bank?

11 A. No, there is not. There is probably
12 around ten folks.

13 Q. How many of the ten individuals on the
14 steering committee are associated with the Federal
15 Reserve Board of Governors?

16 A. I would have to pull the list to
17 confirm.

18 Q. And are those Reserve Board employees
19 or are they actually members that sit on the board
20 that are --

21 A. They're staff members.

22 Q. They are staff members? All right.
23 So we don't actually have any member of the Board of
24 Governors that sit on the steering committee?

25 A. No. The governors do not sit on the

CONFIDENTIAL

Page 78

1 steering committee.

2 Q. Does the Federal Reserve Board of
3 Governors general counsel sit on that steering
4 committee?

5 A. No.

6 Q. Do any lawyer general counsel sit on
7 that steering committee, to your knowledge?

8 A. The general counsel of the Board does
9 not sit on the committee. There's engagement from
10 legal at the Board, but I...

11 Q. How often does the NTAA have meetings?

12 A. At the time that it was formed, I
13 believe it sat out with a cadence of every other
14 week. It's something that has flexed over time as
15 needed, so.

16 Q. Would it be fair to say that Custodia
17 was a topic of discussion repeatedly by the NTAA
18 steering committee?

19 A. It wouldn't.

20 Q. Was Custodia ever a topic of
21 discussion by the NTAA steering committee?

22 A. So the group was charged with looking
23 at different entity types, and so I would say there
24 was probably an awareness by members of Custodia as
25 an entity that had received a SPDI charter, but

CONFIDENTIAL

Page 79

1 Custodia itself was never a topic of conversation
2 with the group.

3 Q. Was the SPDI charter itself from
4 Wyoming a topic of conversation?

5 A. As an example of what was emerging in
6 the industry, yes.

7 Q. Does the NTAA actually formulate
8 policy or regulations?

9 A. No.

10 Q. Is this just basically a think tank?

11 A. I'd say that it was a group that was
12 brought together in recognition that there seemed to
13 be questions about how requests for master accounts
14 are considered, and so the group came together to
15 determine how to better clarify, particularly for the
16 public, how those requests are reviewed.

17 Q. Did the NTAA ever come out with an
18 official recommendation for the Kansas City Federal
19 Reserve as to whether Custodia's application should
20 be approved or denied?

21 A. No.

22 Q. So let me ask you about another entity
23 or committee. What is the practical workstream
24 group?

25 A. So the practical workstream was one

CONFIDENTIAL

Page 80

1 arm underneath the steering committee that was
2 thinking through what is the approach that's taken to
3 bring together 12 Reserve Banks as we -- to share
4 information as we receive and individually analyze
5 requests for master accounts.

6 Q. So the practical workstream would be
7 solely focused on master accounts and sharing
8 information among all the reserve banks?

9 MR. MICHAELSON: Objection. Form.

10 BY MR. ORTIZ:

11 Q. Did I hear you correctly?

12 A. I couldn't say that they were solely
13 focused on that, but the primary focus was just on
14 the practical matter of how you bring together 12
15 Reserve Banks who each individually are receiving
16 requests and making determinations on how to act on
17 them.

18 Q. Was it part of the practical
19 workstream process to try to get consistency among
20 all the Federal Reserve Banks?

21 A. I think that the practical workstream
22 was looking at what is the form that could be used to
23 facilitate the conversations between Reserve Banks so
24 that we could ensure that when we are looking at
25 risks that are presented by a request for master

CONFIDENTIAL

Page 81

1 accounts that we have just a broad view into what
2 those risks are and how they might be mitigated.

3 Q. Does the practical workstream group --
4 how many people are part of that?

5 A. I'm not certain how many sat on the
6 practical workstream.

7 Q. Did you sit on it?

8 A. I did not.

9 Q. Who does from the Kansas City Fed?

10 A. At the time that the practical
11 workstream was functioning, I believe that Christi
12 May-Oder and Nick Billman were sitting on that group.

13 Q. Nick Billman would be assistant
14 general counsel?

15 A. Yes.

16 Q. And remind me of Ms. May-Oder's title.

17 A. She's an assistant vice-president with
18 responsibility for our credit reserves and risk
19 management function.

20 Q. In the chain of command of the Kansas
21 City Fed, is she someone that reports to you?

22 A. Yes.

23 Q. Is she a direct report to you?

24 A. She is.

25 Q. Has this practical workstream group

CONFIDENTIAL

Page 82

1 been disbanded now?

2 A. For all intents and purposes, it's
3 morphed into a group that's called our account
4 request information sharing group which has
5 representation from all the Reserve Banks and is the
6 forum that was designed by the practical workstream
7 to offer a space for Reserve Banks to share what they
8 are seeing with requests for nontraditional accounts.

9 Q. Did the practical workstream group get
10 formed sometime after Custodia submitted its
11 application for master account?

12 A. I would have to go check the specific
13 date. I don't know that I can answer that off the
14 top of my head.

15 Q. And you said so the practical
16 workstream group has morphed into this new group, and
17 tell me what it's called again?

18 A. Account request information sharing
19 group.

20 Q. Is Christi May-Oder still on that group?

21 A. She is.

22 Q. Did the practical workstream group
23 issue any guidelines, regulations, guidance
24 bulletins, anything like that?

25 A. No.

CONFIDENTIAL

Page 83

1 Q. Did the practical workstream group
2 make recommendations to anyone about whether
3 Custodia's master account application should be
4 approved or denied?

5 A. No.

6 Q. How does legal eligibility
7 determination occur with an entity like Custodia
8 seeks a master account application?

9 MR. MICHAELSON: Objection. Form.
10 BY MR. ORTIZ:

11 Q. If you know?

12 A. In the review of legal eligibility, we
13 would engage with our legal staff, and it would
14 require understanding the legal structure and the
15 activities of the institution to ensure that they met
16 the legal eligibility standard.

17 Q. When someone like Custodia is applying
18 for a master account, are there certain aspects of
19 their application that the Kansas City Fed doesn't
20 deal with and the Board of Governors deals with
21 directly?

22 A. Not to my knowledge.

23 Q. Is it true that the Board of Governors
24 cannot delegate the function of looking at the
25 financial system stability aspects of a new

CONFIDENTIAL

Page 84

1 applicant?

2 MR. MICHAELSON: Objection. Form.

3 BY MR. ORTIZ:

4 Q. If you know.

5 A. I couldn't answer if they could
6 delegate it, but the Federal Reserve Board is the one
7 that's charged with -- or is granted a seat on the
8 federal stability oversight group and maintains that
9 responsibility currently.

10 Q. So does the Board of Governors retain
11 that responsibility or does the Kansas City Fed have
12 that responsibility with new applicants?

13 A. Have what responsibility?

14 Q. Looking at financial system stability
15 with a new applicant.

16 A. So in situation where an entity
17 requested a master account, the Federal Reserve Bank
18 of Kansas City would be responsible for reviewing and
19 analyzing that. In reviewing the potential impact on
20 financial stability, we would want to consult with
21 those that have responsibility for maintaining
22 financial stability, which would be the Board of
23 Governors, so we would solicit their input on that
24 topic.

25 Q. The Board of Governors makes the

CONFIDENTIAL

Page 155

1 this Reserve Bank, to the System more broadly, or to
2 other principles so that we can make a final
3 determination.

4 BY MR. ORTIZ:

5 Q. You know, by this point in time when
6 you get that determination by Craig Zahnd, Custodia
7 has been trying to get this for almost a year and a
8 half, and I guess can you not even give me the basic
9 analysis whether at that time, January 2022, were you
10 leaning in favor of giving them a master account or
11 were you against it?

12 A. Again, I don't think that it's am I in
13 favor of or am I against. I think it's a unique
14 situation that requires careful consideration, and so
15 throughout that process, there is an ongoing analysis
16 of the business model that's being proposed, the
17 risks that it presents, if it's possible to mitigate
18 those risks, how that applies in the broader
19 structure, and so as each piece of the puzzle starts
20 to fit into place, that moves us closer to a decision
21 point. I'm not on a camp of one direction or the
22 other. I'm taking into account all of this
23 information to make an informed decision.

24 Q. So you're telling me even a year and a
25 half into this process, you can't even tell me as you

CONFIDENTIAL

Page 156

1 sit here today whether you personally were in favor
2 of it or against it? You can't answer that simple
3 question?

4 MR. MICHAELSON: Objection. Form.
5 BY MR. ORTIZ:

6 Q. With all the parameters you talked
7 about, all the information you wanted, you have a
8 year and a half to get all that information, as we
9 sit here right now, you can't even tell me whether
10 you were for or against it by the time it's
11 determined to be legally eligible?

12 MR. MICHAELSON: Objection. Form.
13 BY MR. ORTIZ:

14 Q. And if you just tell me you can't
15 answer that, tell me that.

16 A. From the beginning of this process, I
17 have concerns about what this entity type and this
18 specific business model present to this Reserve Bank
19 and to the System more broadly.

20 Q. Would you --

21 A. And despite that, I have the
22 obligation to continue to review the proposal to
23 determine what the final recommendation ought to be
24 on the master account request.

25 Q. Do you think you fall into the camp of

CONFIDENTIAL

Page 157

1 being in favor of new innovation for banks, or are
2 you someone that's more conservative in your approach
3 and you don't like to see new innovation in the
4 banking industry?

5 MR. MICHAELSON: Objection. Form.

6 A. Personally, I'm supportive of
7 responsible innovation that's done in a safe and
8 sound manner and protects consumers. My personal
9 views, though, are not what is determining these
10 decisions.

11 BY MR. ORTIZ:

12 Q. You kind of got stepped into a role of
13 having to interface with Custodia because someone
14 named Rob Triano resigned, didn't he?

15 A. Yes. And individual named Rob Triano
16 resigned.

17 Q. What was his role with the Kansas City
18 Fed?

19 A. Rob was an examiner.

20 Q. Rob came from San Francisco because he
21 had special expertise with cryptocurrency, true?

22 A. He did spend time in San Francisco and
23 had expertise in BSA/AML compliance, and I believe
24 also had experience with cryptocurrency.

25 Q. He was the most familiar of anyone at

CONFIDENTIAL

Page 183

1 deals with membership, because the account access
2 guidelines that were put out in the federal register
3 don't deal with membership, correct?

4 A. I'm not certain why they're mentioned
5 here other than the timing seems to align that these
6 conversations were happening around membership -- the
7 membership application, and at the same time the
8 Federal Register Notice on proposed account access
9 guidelines came out.

10 Q. Can we agree on one basic premise that
11 this was unusual and unprecedented in manner and
12 processing a request like Custodia's?

13 MR. MICHAELSON: Objection. Form.

14 A. I can agree that I had never been part
15 of processing a request for an account as well as
16 membership for a special purpose depository
17 institution.

18 BY MR. ORTIZ:

19 Q. Is that why you really didn't do
20 anything without getting the green light from the
21 Board of Governors?

22 MR. MICHAELSON: Objection. Form.

23 A. On the question of membership, then
24 the -- it was important to understand the Board's
25 views on how we should think about membership in the

CONFIDENTIAL

Page 184

1 Federal Reserve System for a new entity type like a
2 SPDI. As far as decisions on the request for access
3 to an account or services, those discussions were
4 ongoing within this Reserve Bank in reaching that
5 decision.

6 Q. You really didn't want to do anything
7 that the Board would be unhappy with; agree?

8 MR. MICHAELSON: Objection. Form.

9 A. I think we wanted to make a
10 well-informed decision.

11 BY MR. ORTIZ:

12 Q. You agree with me the Board of
13 Governors basically had veto power over everything
14 you were going to propose or recommend when it came
15 to Custodia?

16 MR. MICHAELSON: Objection. Form.

17 A. No. I don't think that the Board had
18 veto power over this Reserve Bank's decision on
19 Custodia's master account request.

20 BY MR. ORTIZ:

21 Q. You don't think the Board had veto
22 power?

23 A. The Board did have a role in our
24 assessment of the membership application.

25 Q. Well, in fact, really when we go

CONFIDENTIAL

Page 185

1 through all this, the Board directed what they wanted
2 you to do, and you worked with them to get guidelines
3 in place that would help you get to where they wanted
4 you to be; agree?

5 MR. MICHAELSON: Objection. Form.

6 A. No. This Reserve Bank had concerns
7 with this charter type and with the specific request
8 from Custodia from early on, and we worked to ensure
9 that there were broad conversations happening across
10 the system about unique requests for master accounts,
11 but the Board did not direct this decision.

12 BY MR. ORTIZ:

13 Q. One way to know whether the Board was
14 actually pulling all the strings and making the
15 decisions would be to see what the notes and
16 conversations were in the, quote, deliberative
17 process when these account access guidelines were
18 promulgated, true?

19 MR. MICHAELSON: Objection. Form, and
20 that is calling for what is precisely protected by
21 the privilege.

22 Instruct you not to answer.

23 MR. ORTIZ: You do understand there is
24 a balancing test as to whether our need outweighs
25 your privilege, counsel, and I'm simply establishing

CONFIDENTIAL

Page 186

1 that.

2 BY MR. ORTIZ:

3 Q. If we're really looking to answer the
4 question of is the Federal Board of Governors
5 directing everything that happens with Custodia, that
6 would be one way to find out, to see if Custodia was
7 the driver between all these guidelines that seem to
8 get promulgated that apply to them, true?

9 MR. MICHAELSON: Objection.

10 Objection. Form.

11 You can answer that question as the
12 effect to this case --

13 BY MR. ORTIZ:

14 Q. You can answer.

15 A. I'm not sure what question I'm
16 answering. Can you repeat it?

17 Q. If we're looking to see if the Board
18 of Governors is really directing this process with
19 Custodia versus independent discretion being utilized
20 by the Kansas City Fed, one thing we could look at
21 would be what was the purpose and motivation for the
22 account access guidelines and the various drafts of
23 the S Letter, true?

24 MR. MICHAELSON: Counsel, I object,
25 and this is calling for what is behind the dual

CONFIDENTIAL

Page 189

1 With all the narrative from him, can you answer my
2 question yes or no?

3 MR. MICHAELSON: Repeat the question.

4 BY MR. ORTIZ:

5 Q. If we want to look and see what the
6 motivation for things like the account guidelines,
7 the S Letter, and whether really that was motivated
8 to thwart Custodia, evidence of that would exist in
9 the written communications, notes and emails that
10 went into why these things were promulgated.

11 Do you agree with that; yes or no?

12 MR. MICHAELSON: Objection to form.

13 I instruct you not to answer, because
14 the way that question is formed is evidence of what
15 exists. You can't answer that question without
16 revealing the substance of what's behind the
17 privilege.

18 You can ask whether documents --

19 MR. ORTIZ: Counsel, this is all
20 inappropriate narrative coaching.

21 MR. MICHAELSON: It's not.

22 MR. ORTIZ: It's coaching.

23 MR. MICHAELSON: You're asking for
24 privileged information.

25 MR. ORTIZ: I'm not. I'm simply

CONFIDENTIAL

Page 190

1 asking if the evidence of the real motivation of what
2 drove the guidelines, as she has said earlier, had
3 nothing to do with Custodia versus whether it really
4 does deal with Custodia and SPDIs, I'm simply asking
5 her wouldn't that be the best evidence of the real
6 motivation other than you simply telling her she
7 can't answer what the real motivation was.

8 MR. MICHAELSON: You can't answer --
9 she can't answer what the motivation was behind the
10 guidelines. She can answer what the motivation was
11 behind the master account request.

12 BY MR. ORTIZ:

13 Q. Are you going to answer my question or
14 not? Are you unwilling to answer my question, ma'am?

15 A. I don't fully understand your
16 question, but -- I can't speak to the motivations for
17 the account access guidelines, but I can tell you
18 that the decision to deny the account was that of
19 this Reserve Bank.

20 Q. You're saying solely the Kansas City
21 Fed made that decision? That's what you're saying
22 again?

23 A. The Federal Reserve Bank of Kansas
24 City made the decision to deny the master account
25 request from Custodia.

CONFIDENTIAL

Page 191

1 (Hazen Exhibit No. 18 was marked for
2 identification.)

3 BY MR. ORTIZ:

4 Q. Okay. Let's take a look at
5 Exhibit 18.

6 MR. MICHAELSON: We've been going for
7 an hour. Can we take a break before we start a new
8 exhibit?

9 MR. ORTIZ: Sure. Let's take seven
10 minutes.

11 (Off the record.)

12 BY MR. ORTIZ:

13 Q. I'm going to hand you what's been
14 marked as Exhibit 18, Bate No. 12387. This is an
15 exchange from Tara Humston -- I guess it's from her
16 to you, copy to Christi May-Oder?

17 And if I look at this, it looks like
18 this is referencing questions that someone named Kara
19 had about master account issues -- master account
20 decisions.

21 Do you know who Kara would be?

22 MR. MICHAELSON: I think this is
23 privileged. This is -- I apologize. We're going to
24 have to claw this back. Kara is in-house counsel,
25 and I note the timing of this is just a month after

CONFIDENTIAL

Page 211

1 ever tell them if the Board of Governors does not
2 approve your membership, we're not going to approve
3 your master account prior to the time you gave them
4 notice?

5 A. I don't recall if we spoke in those
6 terms.

7 Q. Because that certainly would have been
8 a big waste of time for Custodia to go through all
9 this gyrations in excess of a two-year period if it
10 was always just tied to membership. If you can't get
11 Fed membership, we'll never get you an account. That
12 might have been information you should have shared
13 with them if that was true, correct?

14 MR. MICHAELSON: Objection. Form.

15 A. I don't think that the only way to
16 mitigate the risk is through membership. Custodia
17 made the election to apply for membership, and we had
18 to consider how that would impact the risk profile of
19 the institution and the account if we were to grant
20 it. At the time that the Board decided that they
21 would not approve membership, then that had to be
22 considered in our decision on the master account
23 request.

24 BY MR. ORTIZ:

25 Q. Really it had nothing to do with your

CONFIDENTIAL

Page 212

1 risk assessment, it had to do with you did not want
2 to appear to be inconsistent with the Board, true?

3 A. No.

4 (Hazen Exhibit No. 24 was marked for
5 identification.)

6 BY MR. ORTIZ:

7 Q. I'll hand you Exhibit 24, Bate
8 No. 2131.

9 MR. MICHAELSON: I believe it's 2132.

10 MR. ORTIZ: Apologize, counsel.

11 BY MR. ORTIZ:

12 Q. So it's Bate No. 2132 on the front and
13 2133 on the back, and I want to have you look at the
14 second page on the back. It's an email from
15 Gaul-Pearson to Ashle Baxter, Ben McGhee, Nancy
16 Fitzgerald regarding Custodia memo to Esther.

17 Who are those individuals?

18 A. Chris Gaul-Pearson is a manager in the
19 credit reserve and risk management function. Ashle
20 Baxter and Nancy Fitzgerald are individuals in the
21 surveillance and risk analysis are. Ben McGhee is an
22 examiner in the applications function.

23 Q. So is it your understanding these
24 individuals would have been responsible for some
25 draft recommendation for Esther George to sign?

CONFIDENTIAL

Page 213

1 A. I'm sorry. Were they working on a
2 memo for Esther to sign; is that what you said?

3 Q. Yeah, the recommendation memo, or is
4 that just something for her to review based on the
5 recommendation from the group? Is that what that is?

6 A. I believe that we're asking for their
7 input into a recommendation memo we're drafting for
8 Esther.

9 Q. So this says CRRM. Is that credit
10 risk and risk management?

11 A. Credit reserves and risk management.

12 Q. Credit reserves. This is moving
13 pretty quick. There are gaps that Judith, Christi
14 and I would like your help filling in given you are
15 the experts.

16 I want to ask you about this: Ben, I
17 have been -- at this time, I've been asked to see if
18 you could help us make sure that we are not getting
19 out of sync with the membership side. We do not want
20 to contradict one another.

21 This is simply saying that if
22 membership is denied, we need to make sure we deny
23 the master account so there's no contradiction,
24 correct?

25 MR. MICHAELSON: Objection. Form.

CONFIDENTIAL

Page 214

1 A. I don't recall that being the context
2 of this discussion. I think that this is looking at
3 the risks that are present, including the capital
4 structure, and then there's also reference to the
5 digital assets and wanting to understand are there
6 any issues that are fixable, curable, or I would say
7 could be mitigated, and we would want to be
8 consistent in saying if they could be mitigated for
9 either the membership or the master account request.

10 BY MR. ORTIZ:

11 Q. So it's your testimony this has
12 nothing to do with making sure you don't contradict
13 the Board of Governors on the membership decision?

14 A. I don't recall that.

15 Q. Have you seen the recommendation that
16 was provided to Esther George?

17 A. I've seen the final recommendation on
18 action on the master account, yes.

19 Q. That she signed off on. But I guess
20 I'm asking have you seen this recommendation memo.

21 MR. ORTIZ: And I'll ask you guys, I
22 don't think that's been produced.

23 MS. CARLETTA: I think it has been.

24 MR. MICHAELSON: I think it has.

25 MR. ORTIZ: We'll try to confirm that.

CONFIDENTIAL

Page 215

1 Has that been produced just like in the last day or
2 so?

3 MR. MICHAELSON: No, no. I don't
4 think so.

5 BY MR. ORTIZ:

6 Q. This is referencing a recommendation
7 memo in December; is it not? It's attached as a
8 document with these emails in December, correct?

9 A. I see that there is work on a memo in
10 December.

11 Q. Dated December 6th, 2022. We've been
12 provided memos from January.

13 MR. MICHAELSON: Okay. Yeah. This --
14 so this has not been produced. The early drafts of
15 this memo reflect attorney-client privilege. There
16 reached a time when the memo ceased to be privileged.
17 We've produced the non-privileged, later-in-time
18 versions.

19 BY MR. ORTIZ:

20 Q. Are any of the individuals responsible
21 for drafting this recommendation memo lawyers that we
22 just talked about, Ashle, Ben or Nancy?

23 MR. MICHAELSON: Objection. Form.

24 A. The individuals on this email are not
25 attorneys.

CONFIDENTIAL

Page 216

1 BY MR. ORTIZ:

2 Q. And there's no lawyers on this email
3 at all, is there?

4 A. No. I don't see any lawyers on this
5 email.

6 Q. Do you know of any information in this
7 original recommendation memo that was drafted by
8 lawyers versus the individuals on that chain?

9 A. I think that the original memo was not
10 drafted by the individuals on this chain. I think we
11 were looking for input from these individuals. I
12 wouldn't be able to speak to who drafted the original
13 recommendation from this.

14 Q. Do you know what the original
15 recommendation was?

16 A. I believe that we've been consistently
17 moving towards a recommendation to deny the account
18 unless there were material facts that would change
19 that, including if the Board of Governors had
20 approved the application for membership.

21 Q. Did members of Vice Chairman Barr's
22 team provide input to you about what should go in
23 that initial recommendation memo to Esther George?

24 A. I don't know that they provided input
25 in the version that was in existence in December.

CONFIDENTIAL

Page 217

1 Ultimately, they did review our recommendation memo
2 to Esther George specifically to provide input on
3 areas of -- within their purview, including
4 implementation of monetary policy and financial
5 stability. I believe that they also had experts in
6 BSA/AML risk that provided input as well.

7 Q. Were those experts from the Board or
8 from somewhere else, what you just said, BSA and AML?

9 A. The document was drafted by staff at
10 the Federal Reserve Bank of Kansas City for President
11 George, but we did share a draft copy to gather input
12 from the Board of Governors on those areas.

13 (Hazen Exhibit No. 25 was marked for
14 identification.)

15 BY MR. ORTIZ:

16 Q. I'll hand you Exhibit 25, Bate
17 No. 11698. You may not know this. Do you know where
18 it's referenced as privilege, is it your
19 understanding that's attorney-client privilege on
20 this document? Do you know one way or another?

21 A. I do not know.

22 Q. I want you to look at the second page.
23 Looks like an email from Margaret DeBoer from the
24 Board of Governors that you were copied on.

25 Who is Margaret DeBoer, if you know?

CONFIDENTIAL

Page 218

1 A. Marnie DeBoer is a staff member in
2 monetary affairs of the Board of Governors.

3 Q. She references at the top of this
4 page, One thing that came to mind is that membership
5 request does not rely on monetary policy or financial
6 stability concerns, and wonder if it makes sense to
7 take a similar tack with the account request. Best,
8 Marnie.

9 What is she asking you to do, to
10 dovetail the responses between the membership and the
11 master account?

12 A. Can you show me where you were reading
13 from?

14 Q. Sure. The very top of Page 11699?

15 A. Happy New Year all?

16 Q. Yeah. Look at the second sentence
17 there, referencing coordinated account request work
18 for MA, which I assume means master account.

19 A. I think it might mean monetary
20 affairs, the division of the Board of Governors.

21 Q. Well, it says one thing that came to
22 mind is the membership request does not rely on
23 monetary policy or financial stability concerns. I
24 wonder if it makes sense to take a similar tack with
25 the account request.

CONFIDENTIAL

Page 226

1 involved in tracking the lawsuit. We were focusing,
2 for our purposes, on the assessment of the account
3 and our determination of the request.

4 BY MR. ORTIZ:

5 Q. I don't want to know what you said,
6 but I take it you met with legal counsel throughout
7 the litigation process to see where this stood,
8 especially after the notion to dismiss hearing with
9 Judge Skavdahl; is that true?

10 MR. MICHAELSON: Objection. Form.

11 A. We work closely with the legal staff
12 in the Reserve Bank, and so that didn't change with
13 the timing of the lawsuit.

14 BY MR. ORTIZ:

15 Q. I'm going to hand you what we'll
16 mark -- this is Bate No. FRB-AR 000335. I'm going to
17 mark it as Exhibit 26.

18 (Hazen Exhibit No. 26 was marked for
19 identification.)

20 BY MR. ORTIZ:

21 Q. This is a document from you to Jason
22 Hinkle at the board, Marnie DeBoer at the Board, and
23 others with copies to a number of people at the
24 Kansas City Fed, and you're advising on January 6th,
25 2023, Pursuant to the proposed S Letter, we are

CONFIDENTIAL

Page 227

1 providing our predecisional draft memorandum
2 regarding potential actions on Custodia's request for
3 a master account; is that right?

4 Did I read that right?

5 A. That's what it says.

6 Q. And this was something new where you
7 had to provide a predecisional memorandum to the
8 board of directors regarding your potential action,
9 and it was due what was required by the S Letter
10 2667?

11 MR. MICHAELSON: Objection. Form.

12 A. To my knowledge, this was the first
13 time that we had had a master account that we were
14 going to deny since the S Letter had been drafted,
15 and so this was provided in line with what was at the
16 time in the draft S Letter. Our practice prior to
17 the S Letter would have been to notify the Board of
18 decisions to deny accounts, but this would be the
19 first time it would be pursuant to the proposed
20 S Letter.

21 BY MR. ORTIZ:

22 Q. And the S Letter and the change in
23 guidelines all came just shortly before this, didn't
24 they?

25 MR. MICHAELSON: Objection. Form.

CONFIDENTIAL

Page 228

1 A. I think you showed me earlier what the
2 S Letter had been in draft for quite some time prior
3 to this.

4 BY MR. ORTIZ:

5 Q. Yeah, but nobody really saw it. My
6 clients never saw it until it was issued late in
7 2022; agree?

8 A. I don't know when your clients saw it.

9 Q. So I'm going to hand you what we'll
10 mark as Exhibit 27, which is -- this is Bate number
11 AR 000336.

12 (Hazen Exhibit No. 27 was marked for
13 identification.)

14 BY MR. ORTIZ:

15 Q. So this is referenced as an executive
16 summary. It also says it's attorney-client
17 privileged and confidential, but it looks like
18 it's -- tell me what it is, and does that correspond
19 with what was attached in the previous exhibit?

20 Does that correspond with Exhibit 26
21 where there was an attachment of the master account
22 recommendation memo draft? Do you think that's the
23 same thing, or is that something different?

24 MR. ORTIZ: And, counsel, if you know,
25 is this something else that hasn't been produced yet,

CONFIDENTIAL

Page 251

1 we had to take into account the actions by Custodia,
2 and when they applied for membership, we had to
3 understand how that was going to play out so we could
4 factor it into our decision.

5 BY MR. ORTIZ:

6 Q. Let me just get to the bottom line.
7 Was every initial recommendation memo to Esther
8 George showing what we've gone through, were all
9 those recommendations to deny master account?

10 A. All of our communications have
11 consistently highlighted the risks that are posed by
12 the SPDI charter, by the risks that we saw through
13 our analysis of Custodia specifically.

14 Q. My question is a lot simpler. I just
15 want to know what's the end product. Was the end
16 product your representation to the president of the
17 Kansas City Fed deny their master account
18 application; is that the recommendation coming from
19 you and your team for as long as you started making
20 recommendations to her in writing?

21 A. The recommendation memo that you have
22 is a recommendation to deny based on our analysis of
23 the Federal Reserve Bank of Kansas City.

24 Q. And the first time we have a
25 recommendation memo in writing is sometime after the

CONFIDENTIAL

Page 252

1 meeting and the briefings with Vice Chair Barr
2 sometime in November, correct?

3 A. I don't know the specific times of
4 when we began drafting recommendations. I recall
5 that we had early versions prior to membership even
6 being pursued of how we would consider the master
7 account application and recommending denial at that
8 point.

9 Q. Prior to the time frame when we get
10 down to this crunch time in October, November,
11 December of 2022, were there members of your group
12 that were in favor of approving Custodia's master
13 account application, to your knowledge?

14 A. Of approving the request for a master
15 account?

16 Q. Yes.

17 A. I couldn't answer -- I don't know.

18 Q. Did you ever take a polling of the
19 people that were working on that and, you know, get a
20 sense what they thought one way or another?

21 A. I'd say our ongoing analysis focused
22 on an open discussion of raising the risks that the
23 account would present, how we might think about
24 mitigating those risks and what action we might take.
25 I wouldn't say that we polled individuals to make a

CONFIDENTIAL

Page 253

1 determination, no.

2 Q. You didn't ever do that?

3 A. Poll them?

4 Q. Yeah. Asked them what do you think.

5 You know, what do you think, John Smith, would you be
6 in favor of granting a master account based on what
7 you know, or, Mary Jane, what do you think about
8 that?

9 A. I think that was an active part of the
10 conversations, but we didn't stop and poll everybody
11 at various points in time on the application.

12 Q. Who made the determination to consider
13 Custodia a complex bank?

14 MR. MICHAELSON: Objection. Form.

15 A. So a complex banking designation
16 generally comes through the supervision function, so
17 it would have been more relevant to the request for
18 membership rather than the request for a master
19 account.

20 BY MR. ORTIZ:

21 Q. So do you think that's a definition
22 that was put on Custodia by the Board of Governors
23 versus the Kansas City Fed?

24 A. I don't know in what context it was
25 determined or that it was determined.

CONFIDENTIAL

Page 343

1 about the SPDI charter generally at that time period.

2 A. I think she had questions about the
3 SPDI charter generally and I think that that is why
4 she expressed that she wanted to confirm that a
5 master account was not necessary for the operation of
6 a SPDI.

7 Q. What do you mean by that?

8 A. That while an institution that has a
9 SPDI charter might want to pursue a master account,
10 did not want Wyoming creating a structure that it was
11 only possible to operate a SPDI charter if it had a
12 master account, because the assumption that all SPDI
13 charters would be able to obtain master accounts was
14 not accurate.

15 Q. Do you recall -- at anytime do you
16 recall a moment, a period when Ms. George was
17 favoring granting a master account to Custodia?

18 A. I don't.

19 Q. And did there come a time when she
20 retired?

21 A. There did.

22 Q. Do you recall about when that
23 happened?

24 A. At the end of January.

25 Q. And is there any connection between

CONFIDENTIAL

Page 344

1 the timing of her retirement and the denial of
2 Custodia's master account request?

3 A. I think it was important to us that
4 given the work that Esther had been engaged in in
5 this and her understanding of the topics and her
6 strong views on the decision on the master account,
7 it was important that she be able to make the final
8 decision on the master account prior to retiring.

9 Q. When you say strong views on the
10 outcome, were they strong views in favor of granting
11 or denying the master account request?

12 MR. ORTIZ: Can you restate that
13 counsel? You're fading off.

14 BY MR. MICHAELSON:

15 Q. What were her strong views on
16 Custodia's master account request?

17 A. Consistently through the analysis, I
18 believe that Esther was highly skeptical of granting
19 an account, and so I would say that her views were
20 skewed towards denying the account.

21 Q. I would like to direct your attention
22 to Exhibit 15.

23 MR. ORTIZ: How much more do think,
24 counsel? I might need a break.

25 MR. MICHAELSON: I think this is going

CONFIDENTIAL

Page 345

1 to be the last document that I work with.

2 BY MR. MICHAELSON:

3 Q. Do you recognize Exhibit 15?

4 A. I do.

5 Q. What is Exhibit 15?

6 A. It's a copy of the guidelines for
7 evaluating account and service requests that was
8 issued by the Board of Governors.

9 Q. And when was it issued?

10 A. March 8th, 2022, is the date of the
11 Federal Register Notice.

12 Q. This is like the Federal Register
13 Notice of the guidelines?

14 A. Yes.

15 Q. Okay. Let's work with this date. So
16 do you see on the third page of the document, at the
17 top it's -- in the top right corner, it's Page
18 No. 12959?

19 A. Yes.

20 Q. There's Section 4, updated account
21 access guidelines, do you see that?

22 A. I do.

23 Q. And can you talk very high level what
24 this section of the guidelines contains?

25 A. So this section of the draft

CONFIDENTIAL

Page 350

1 specifically craft the SPDI litigation to the
2 satisfaction of your Reserve Bank?

3 A. I wasn't engaged in work on the SPDIs
4 at the time that the legislation was being drafted.

5 Q. Do you think there is a way Esther
6 George did not know that her general counsel and
7 assistant general outside counsel were engaged in
8 over a hundred meetings with the Wyoming legislature
9 to craft the legislation in a manner that the Federal
10 Reserve Board approved them? Are you saying there is
11 possibility she did not know that was going on?

12 MR. MICHAELSON: Objection. Form.

13 A. I can't speak to what Esther knew or
14 didn't, but I don't agree that Esther would have been
15 looking to Wyoming drafting the legislation to the
16 satisfaction of the board. I do think that Esther
17 was aware of the legislation, and my understanding in
18 subsequent conversations is that this is where
19 Esther's view that the legislation shouldn't require
20 or presume that all SPDIs would have access to master
21 accounts was important.

22 Q. So if I understand correctly, I want
23 to synthesize what I think you told your counsel that
24 notwithstanding how much work would have been -- gone
25 in on the front end with Wyoming's legislature and

CONFIDENTIAL

Page 351

1 representatives from your Reserve Bank and
2 notwithstanding what the business plan was and
3 anything else, from day one, Esther George was
4 skeptical of the whole SPDI charter concept, correct?

5 MR. MICHAELSON: Objection. Form.

6 BY MR. ORTIZ:

7 Q. Go ahead. You can answer.

8 A. I think that Esther had questions
9 about the risks that it presented, and I think that
10 it would -- because there is always a decision to be
11 made on if an account is going to be granted, it
12 shouldn't be presumed that all entities of any type
13 are going to have access to an account.

14 Q. And as you already said, from day one
15 throughout the process, she was a no on granting a
16 master account to Custodia, true?

17 A. My understanding from conversation
18 around this is that Esther was -- had concerns or was
19 not -- was leaning towards denying an account from
20 the beginning.

21 Q. So when my client goes through this
22 two-year process plus and all the work on the front
23 end by the Wyoming legislature and you get to this
24 point in time, regardless of what 248a says,
25 regardless of anything my clients have done, you're

CONFIDENTIAL

Page 352

1 saying one person, Esther George, can thwart their
2 entire ability to work and get a master account
3 through the Federal Reserve System simply at her
4 subjective belief that she doesn't like that and is
5 skeptical?

6 If what you said, she alone makes that
7 decision, then this one person based on their
8 subjective belief can prevent charter banks like
9 Custodia from every getting a master account, true?

10 MR. MICHAELSON: Objection. Form.

11 A. I still don't agree with the phrasing
12 that any of this work is being done relative to what
13 individuals like or don't like. I think that the
14 responsibility of any Reserve Bank president is to
15 think through the request for accounts and services
16 that come to their Reserve Bank and that that's done
17 through the lens of the risk that it presents to the
18 Reserve Bank and to the payment system, and so based
19 on her experience, I think that she had questions
20 about the risks that were introduced, but I think we
21 had a responsibility to assess the specific business
22 model and determine if those risks could be
23 mitigated.

24 When we determined that those could
25 not, then I think you get the recommendation and her